

Hon. Pete Wilson
Little Hoover Commission
Public Hearing on CALFED/Bay-Delta Authority
August 25, 2005

Thank you for the opportunity to speak here today.

California's water supply has been a key concern of mine throughout my service to this state. As a Mayor, I saw the determining factor water plays in the ability to accommodate our growing population and sustain our quality of life. As Senator and as Governor, I maintained the highest priority on securing a reliable water supply as the lifeblood of our economy, our environment, and our communities.

In reviewing the performance of CALFED, it is first important to understand why it was created, what it was set up to do, and what it eventually became.

Why was CALFED created?

- A sustained drought from 1986 to 1992 that put stress on all water uses throughout the system.
- A series of Endangered Species Act listings, each presenting a separate demand for water supply totally without regard for existing water rights and uses.
- The 1992 Central Valley Project Improvement Act diversion of water allocations for environmental purposes.
- A cycle of regulatory and legal battles between the state and federal environmental agencies to set water quality standards for the Estuary.

These and many other actions made inevitable the fundamental management problem that is created when too many agency decisions are made without comprehensive priority setting or coordination. But in this case, this bureaucratic dysfunction threatened the reliability of the main source of California's developed water.

And of course none of these agencies is able to weigh and assess the broad range of public purposes which lay claim to this critical resource. Instead, each looked only to its own needs. EPA may have expertise in water quality. DWR and the Bureau are expert at running their facilities. The wildlife agencies work for what they feel is best for specific species. But none of these agencies is—nor was any set up to be—capable of ordering and managing the whole of the public and private purposes to which water

resources are put in California. Their individual decisions—made in the isolation of their statutory parameters—often had profound and unhappy impacts on other parts and users of the system.

It is no exaggeration to say the result was a chaos of competing claims often operating at cross-purposes. The need for a comprehensive water resource mechanism to manage and make sense of this welter of uncoordinated federal and state agency decisions was painfully clear.

The result was CALFED.

The enormity of its challenge is reflected in the fact that the Authority today has the daunting responsibility to review and make recommendations on about 100 state and federal programs, and to review and comment on more than another 60.

Coming into office in the middle of one of the worst droughts in California's history, I immediately began forming the "CAL" side of the needed federal-state partnership for management of California's water resources. It began with appointment of a Water Oversight Council.

In April 1992, this Council issued their Comprehensive Water Policy for the State. In December that year, I reformed this oversight body into the Water Policy Council composed of the 8 State departments and agencies with responsibility for water supply and water quality. I created the Bay Delta Oversight Council (BDOC) to develop a comprehensive program to protect and restore the Bay-Delta system, and directed the State Water Resources Control Board to issue interim water quality standards and implementing water rights.

Subsequently, the "FED" component—the Federal Ecosystem Directorate—was formed in September 1993 by EPA, the Bureau, and the federal wildlife and fisheries agencies with the purpose of coordinating federal actions related to the Bay-Delta.

At the same time, EPA brought matters to a head by issuing its proposed Water Quality standards for the system.

While EPA had authority under federal law to issue such standards, implementation remained with the State. Federal law allows EPA to address water quality, but forbids it from determining water allocations. And in California as in the rest of the arid West, questions of water quality can only be addressed hand-in-hand with questions of water rights. EPA's action created a crisis that could only be resolved through the federal agencies cooperating with the state.

California had just survived a drought that showed the limits of a decades-old plumbing system with two parts, one federal and one state. The system was broken, and the dysfunctional regulatory and governance structure threatened to make it worse.

Rather than fighting the issues out in prolonged court and legislative battles, Secretary Babbitt and I brought the CAL and the FED components together through an MOU designed to fix the problems. A separate San Francisco Bay-Delta Agreement specified the regulatory issues that threatened to upset the process and laid out how they were to be addressed in the interim while the long term solutions were developed under the Accord.

Note that this was not a formal process. Much of what was wrong with the system was too many agencies making too many decisions in isolation. The federal agencies did not talk to each other. And except for the occasional exception, the federal agencies did not talk to their state counterparts. The solution was to bring all these players into the same room, and require them to work with the stakeholders in the same venues.

Initially, the process worked well. It did so for many reasons. The regulatory and institutional barriers were put to one side. The agencies were directed to focus on working together to develop concrete solutions, rather than continuing to act unilaterally and creating more conflicts. The highest possible level of participation was maintained—I made my Agency Secretaries and Department Directors personally accountable for keeping these deliberations on track.

The process remained open to change. The original purposes of this effort were restoring the health of the estuary and providing the stable regulatory environment needed to ensure long-term reliability of water supply. But the focus upon water supply very quickly assumed more and more importance. This system accounts for 2/3 of the State's developed water supply. Events elsewhere in the State—the Mono Lake decision, the enormity of deferred maintenance on the Hetch Hetchy system, the Colorado River 4.4 Plan and the subsequent devastating drought on that system—highlighted the vulnerabilities of our total water network and its dependence upon the Bay-Delta deliveries.

Most important and most promising, CALFED was the only place where the key federal and State decision makers came together with the express purpose of working through the complexities of our water supply and water quality needs to resolve conflicts. It was the only place where the major stakeholder groups were at the table and publicly committed to working through these problems outside the courts.

Support for this effort was maintained at the beginning not only by the level of involvement by both State and federal officials, but by financial commitment as well. At a time of great budget challenges for the state, we passed Proposition 204 to kick start the state's share of this effort, with a particular focus on providing early investments in the environmental components of the program. In two rounds of appropriations, these funds were largely matched by Congress.

In the final year of my Administration, we made every effort to bring the decisions to a conclusion. Secretary Babbitt and I personally committed to a series of meetings to try to resolve the final issues and produce a Record of Decision in 1998. And while both of

us devoted considerable effort to the task, the main issue remaining was the role of new surface water storage in the final plan.

Our efforts laid a solid base for California's future in all other subject areas of the CALFED plan. A detailed and unprecedented program for environmental restoration of the Bay-Delta. Aggressive programs to help meet future water needs through conservation, reuse, water trading, and integrated water management planning on the local level. Creation of an Environmental Water Account to make the wildlife and fisheries agencies partners in future water decisions. Launch of the first comprehensive review of a century's-worth of flood control works in the Central Valley and the Delta. Proposed operating procedures and facility enhancements to ensure more efficient use of the existing State and federal water projects.

We moved the decisions along. The basic structure was completed. The key remaining point of difference relating to storage was clearly laid out. The time needed to prepare the EIS/EIR—to put a Bay-Delta blueprint in place—ran out before we could come to agreement on storage. The commendable progress we had made on the environmental front was not achieved on the state's storage needs.

Therefore, the Bay-Delta product I handed to my successor was not what I had hoped to have completed. Secretary Babbitt and Governor Davis did sign a Record of Decision 2 years later, but disappointingly it did not resolve critical supply questions which persist to this day because of the failure to address California's storage needs.

And today, the CALFED process appears to be losing ground. While the program continues to pursue and accomplish much in the environmental areas—it is nowhere close to preparing this state for the next drought. Let alone preparing us for the 48 million Californians now projected to be here in 25 years.

If I had to sum up why I believe CALFED has strayed from its course, it would be: process has replaced leadership.

CALFED began with ambitious goals born of necessity to achieve federal-state consensus. Extensive efforts were made to do so. But some of the most contentious issues remain, awaiting final decisions, policy and political decisions, that can only be made with vision and leadership. That has been lacking.

For example:

Apart from the first two years when state and federal contributions were roughly equal, the needed federal share remained missing until the recent success of Senator Feinstein, Representatives Pombo and Calvert, and others.

On the state side, CALFED has gone from being a state budget priority to dependence on bond funds raised from dubious pay-to-play initiatives promoted by a Sacramento advocacy group as a revenue-generating source.

A guiding principle of CALFED had been that all parts of the process would move forward at the same time—water quality measures along with environmental restoration along with water supply and the other components of this complex system. All would advance together. This state intention was to produce a result far superior to the pre-1994 situation in which none advanced because every action was stymied by the competing stakeholders. Today, CALFED still can point to its work in the environmental realm, but efforts to fix the basic plumbing remain mired “in study.”

The Authority itself provides another case in point. I am told that the work of this body was put on hold for most of a year because of a simple paperwork issue—a decision by the federal lawyers that the federal participants could not engage as long as they would be required by the State to file the Form 700 conflict of interest statements. An issue of sovereignty perhaps to a lawyer sitting in Washington, but Secretary Babbitt and I faced similar objections early in the process—such as applicability of FACA and other state and federal procedures—and we either fixed them or tolled them and got on with the work.

And the most telling example is in the Record of Decision itself.

This Record of Decision was to be the crowning moment of the CALFED process—a blue print to improve and secure the environmental quality of the Delta while increasing the reliability of the source of 2/3 of California’s developed water. That was the reason why Secretary Babbitt and I devoted so much time to try to complete this work.

Yet, nowhere is the failure of will on this program demonstrated more clearly than by the fact that literally within days of the release of the ROD, CALFED staff began referring to this product as simply a “framework document.”

Not a blueprint to meet the future water needs of 48 million people while preserving the Delta and safeguarding the environment. Not a capital investment plan to fulfill and balance the water supply needs of fish, farms, and folks. But a “framework document” to launch yet another round of discussions, studies, and planning.

CALFED was an ambitious effort. It had an ambitious scope, set an ambitious schedule, and ambitious goals. Of necessity . . . if we are in fact to achieve the economic and physical health of this water-dependent state in this coming century.

Those of you who walk through the doors of the State Courts building here are greeted with the motto: “Give me men to match my mountains.” The Australians carry this charge a bit further in an old poem that goes: “Give me men to match my mountains, Give me men to match my plains, Men with Freedom in their vision, and creation in their brains.”

Instead of vision and results, the men and women of CALFED—as dedicated as they are—have given us a list of requirements—imposed by 404, CEQA, NEPA, ESA, CESA, X-2 standards, and the myriad other mystic challenges of the bureaucratic water world.

Bureaucracy has taken over the program. Instead of decisions, we now see endless process.

It is time to reinvigorate this program and restore CALFED to the policy prominence it deserves. Left alone to their ways, Sacramento and Washington will simply not wade into this thicket of issues until the next drought or until 48 million people demanding clean water from their taps returns us to the crisis mode. These crises will come. We need leadership and a leadership structure to make the hard decisions now to prevent challenges from growing into crises.

Thank you.